IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 250 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FULAJI GOLAJI

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. First Appeal No. 250 of 1980

MR KG SUKHWANI for Appellant

MR MD PANDYA for Respondent Nos. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/07/2003

ORAL JUDGEMENT

Present appeal has been filed by the original plaintiff against the judgment and decree dated 23-11-1979 passed by the learned Civil Judge (S.D.),

Ahmedabad (Rural) at Narol in Civil Suit No.98 of 1978 whereby he has dismissed the suit of the plaintiff with costs.

2. The facts in short are that on 26-12-1979 one Kanubhai Dhulabhai Patel along with Fulaji Galaji were going from the field situated in the sim of Dhamtavan Village, Taluka Daskroi, Dist. Ahmedabad, to take lunch. At that time, live wire from the grid-line of the Gujarat Electricity Board fell on Kanubhai Dhulabhai and Kanubhai succumbed to the injuries suffered due to electric shock. Fulaji Galaji, while trying to save Kanubhai, also received injuries on his right hand and right leg. Therefore, Fulaji Galaji filed a suit against the Board claiming compensation of Rs.12,500/-. The appellant resisted the claim petition. At the end of trial, after giving opportunity to the parties concerned, learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) vide judgment and decree 23-11-1979 rejected the said petition which is giving rise to the present First Appeal.

3. Heard learned counsel for the appellant, Mr.K.G.Sukhvani and Mr.M.D.Pandya, learned counsel on behalf of the respondents.

4. Learned counsel for the appellant has mainly argued that here in this case, finding of the court below that incident has taken place not as a result of breach of statutory obligation on the part of the respondent-Board is not just, legal and proper either on facts or on law. It is further argued that the incident itself speaks that maxim of res ipsa loquitur is applicable in this case, but learned Judge has failed to apply the same. It is contended that panchnama of scene of offence and evidence on record including that of Board show that incident has taken place when simda tree branches fell on the wire as a result of which, live aluminium wire touched with iron wire which when broke fell on Kanubhai and Kanubhai succumbed to electric shock whereas appellant suffered injuries while handling the said wire to save Kanubhai and, therefore, it cannot be said that present appellant was negligent. According to him, it is the duty of the respondent Board to see that branches of tree are cut in time and live iron wires are not broken down letting it to fall accidently on the passers-by and here in this case, it has not been cut in time resulting into the accident in question and hence, only the Board is negligent. It is further contended that if the evidence on record is evaluated then it can be seen that maxim of res ipsa loquitur is applicable

and, therefore, burden of proof of negligence is shifted to the Board, but Board has failed to prove the same. It is further contended that if the evidence putforward by the defense is accepted, then also, it can be seen that it is a negligence on the part of the board and, therefore, holding of issue No.3 by the Court below is not just, legal and proper. Looking to the nature of injury suffered by the appellant, length of treatment taken by him and other aspects of the matter, Court ought to have come to the conclusion that appellant has suffered damage to the tune of Rs.12,500/- and hence, it was prayed that said amount may be awarded to the appellant.

5. Learned counsel for the respondents-Board, Mr.Pandya has argued in support of the finding arrived at by the Court below and stated that since the judgment and award of the Tribunal is just and proper, same are not required to be interfered with. It is contended that appellant ought not to have touched or handled the live wire and by doing so, he himself acted negligently. It is stated that sufficient care and caution had been taken by the Board by deploying an employee in this regard. It is further stated that grid-line was existing there since last many years and, therefore, if any incident as in the present case has taken place, it can be said to be an accident in which Board cannot be said to be negligent in any manner. Drawing my attention towards the books Exs.26 and 27, it is contended that some papers of the books were torn and these books do not show the treatment of the appellant as an indoor patient in the hospital. It is further contended that even if it is believed that the Board is negligent then also, amount of damages assessed by the Court below while deciding issue No.3 is just and proper and does not require any interference.

6. From the aforesaid discussion and the perusal of oral as well as documentary evidences, it appears that the present appellant has received injury while handling the live wire in order to save Kanubhai who was already caught in live electric wire. It is not in dispute that the electric current directly did not pass through iron wire but it passed through aluminium wire due to falling of simda tree branches upon the live aluminium wire and since said iron wire fell on Kanubhai, he succumbed to the injuries and while trying to save Kanubhai, the present appellant received electric shock. It was the duty of the Board to have taken proper care and caution to see that branches of the tree do not reach and touch the grid-line and were required to be cut in time. The evidence shows otherwise. Therefore, if I accept the

defense of the defendant Board, then also it cannot be said that defendant was not negligent. Here in this case, looking to the nature of the incident, maxim of res ipsa loquitur will apply and, therefore, burden is shifted upon the respondents-Board to prove that they were not negligent. But they have failed to establish the same and, therefore, the finding to that effect of the trial Court is required to be altered. Hence, I hold that principle of maxim of res ipsa loquitur is applicable in this case and the respondents-Board have failed to prove that they were not negligent.

7. Now arises the question regarding quantum. It has been categorically stated by the appellant in his deposition at Ex.25 that as a result of electric shock, he received serious injury on his leg and hand and was taken to L.G.Hospital at Ahmedabad. According to him, he was kept there as an indoor patient for which, he had to spent Rs.2,000/- towards medicines. He has also deposed that at the time of incident, he was working with the deceased Kanubhai as a daily agricultural labourer in the field and he used to get regular work and thereby he was getting Rs.7/- to Rs.8/- per day. He has not been cross-examined on both these aspects. He had fairly admitted in his cross-examination that he has not kept any account for the medical expenses incurred.

8. The contention of learned counsel for the defendant Board, Mr.Pandya that some papers of the books were torn or the books do not show the appellant's remaining in the L.G.Hospital as an indoor patient cannot be accepted in view of the oral evidence of an independent witness namely, Dr.Rajesh Parikh, who has examined at Ex.37. According to Dr.Parikh, the present appellant remained in L.G.Hospital as an indoor patient from 26-12-1977 to 9-2-1978 and was examined by Dr.M.V.Shah. It was opined by Dr.Shah that the injury on the appellant on right palm, fingers and right leg could have been caused due to electric shock if electric wire is touched or handled and the books given to the patients are at Exs.26 and 27. He admitted in his cross-examination that he gave this deposition based on the hospital record. Looking to the amount spent towards medical expenses and the length of treatment taken by the appellant, amount of Rs.2,000/-spent by the appellant ought to have been awarded under the head of medical expenses alone.

9. It is an undisputed fact that the appellant is staying in Dhamtavan Village, Taluka Daskroi, District Ahmedabad, and for visiting and taking his care at the

hospital, his parents might have spent some amount. There is no evidence regarding the permanent partial disability as also the nature of treatment taken by the appellant. It is in the oral evidence of the appellant that he is not able to do any work due to disability on his right hand and due to leg injury, he is facing difficulty in walking. Facts remain that he has received severe injury and has been treated as an indoor patient for 45 days and hence, it is to be presumed that some disability might have been caused on his hand which may come in the way of his life in future.

10. Having regard to the above facts and circumstances of the case, I am of the opinion that the the appellant-plaintiff has proved beyond reasonable doubt that the incidents of falling off a wire and his suffering injuries are the result of rash and negligent acts of respondents-defendants. Hence, if a lumpsum amount of Rs.10,000/- is awarded in favour of the appellant, it will meet the ends of justice.

11. It is ordered that a lumpsum amount of Rs.10,000/-shall be paid by the respondent-Board with an interest at the rate of 6% per annum from the date of claim petition till its realisation. The impugned judgment and award of the Tribunal shall stand modified accordingly. First Appeal stands partly allowed. Decree be drawn accordingly.

(R.P.DHOLAKIA,J.)
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